

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

BEN TERRY WISEMAN, #03871-078,)
Petitioner,)
)
v.) 3:07-CV-0355-R
) ECF
DAVID BERKEBILE, Warden,)
Respondent.)

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b), and an order of the court in implementation thereof, this case has been referred to the United States Magistrate Judge. The findings, conclusions and recommendation of the Magistrate Judge are as follows:

FINDINGS AND CONCLUSIONS:

Type of Case: This is a petition for a writ of habeas corpus brought by a federal prisoner pursuant to 28 U.S.C. § 2241.

Parties: At the time of filing this habeas action, Petitioner was confined at FCI Seagoville in Seagoville, Texas. He is presently residing at CCM Houston, a community correction center. (*See Attachment I*, for Bureau of Prisons Inmate Locator print-out). Respondent is the warden of FCI Seagoville. The Court did not issue process in this case, pending preliminary screening.

Findings and Conclusions: Whether a case is moot is a jurisdictional matter, since it implicates the Article III requirement that there be a live case or controversy. This court is obliged to raise the subject of mootness *sua sponte*. *Bailey v. Southerland*, 821 F.2d 277, 278 (5th Cir. 1987); *Donovan v. Air Transport District Lodge No. 146*, 754 F.2d 621, 624 (5th Cir.

1985).

The gravamen of the habeas corpus petition is that the BOP had advised Petitioner that he would be placed in a halfway house only during the last two-months of his sentence, instead of during the entire last six months of his sentence from June until December 5, 2007.

As reflected in the BOP Inmate Locator print-out, Petitioner was transferred to a community correction center in Houston, thereby rendering moot the relief sought in this petition. *See Bailey*, 821 F.2d at 278-79. Dismissal of the petition as moot is therefore appropriate. *See McRae v. Hogan*, 576 F.2d 615, 616-17 (5th Cir.1978).

RECOMMENDATION:

For the foregoing reasons it is recommended that the petition for writ of habeas corpus be DISMISSED as moot.

A copy of this recommendation will be transmitted to Petitioner.

Signed this 2nd day of August, 2007.



WM. F. SANDERSON, JR.
UNITED STATES MAGISTRATE JUDGE

NOTICE

In the event that you wish to object to this recommendation, you are hereby notified that you must file your written objections within ten days after being served with a copy of this recommendation. Pursuant to *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*), a party's failure to file written objections to these proposed findings of fact and conclusions of law within such ten-day period may bar a *de novo* determination by the district judge of any finding of fact or conclusion of law and shall bar such party, except upon grounds of plain error, from attacking on appeal the unobjection to proposed findings of fact and conclusions of law accepted by the district court.

ATTACHMENT I